

CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES
OF WILD FAUNA AND FLORA



Seventeenth meeting of the Conference of the Parties
Johannesburg (South Africa), 24 September – 5 October 2016

Species specific matters

Maintenance of the Appendices

Decision-making mechanism for a process of trade in ivory

PROPOSAL OF BENIN, BURKINA FASO, CENTRAL AFRICAN REPUBLIC,
CHAD, ETHIOPIA, KENYA, NIGER AND SENEGAL

1. This document has been submitted by Benin, Burkina Faso, Central African Republic, Chad, Ethiopia, Kenya, Niger and Senegal.

Summary

2. Elephants face a severe crisis in Africa as a result of the illegal ivory trade. The data gathered under the MIKE and ETIS programmes demonstrate that poaching and illegal trade are reducing elephant populations continuously. Moreover, economic analysis demonstrates that re-opening legal trade would risk a runaway expansion of ivory trade with potentially devastating effects on elephants. It is vital that the Conference of the Parties (CoP) sends the clearest possible signal to poachers, traders and consumers that CITES is “closed for business” as far as the ivory trade is concerned. The Convention can then devote its efforts to halting illegal trade, curbing global and domestic demand for ivory, implementing the African Elephant Action Plan and protecting elephants in their habitats, rather than debating their further exploitation for legal trade in ivory. In January 2016, the 66th meeting of the CITES Standing Committee (SC66) took a welcome interim step by agreeing that the Working Group on the Decision-Making Mechanism for a Process of Trade in Ivory (DMM) had been unable to conclude its work over the previous three years and to seek advice from the Conference of the Parties on whether the mandate should or should not be extended. This proposal recommends that the CoP does not extend the DMM mandate provided under Decision 16.55 (and formerly Decision 14.77).

Background

3. In 2007, the Conference of the Parties (CoP) adopted Decision 14.77, directing the CITES Standing Committee (SC) to propose a “**decision-making mechanism** for a process of trade in ivory under the auspices of the Conference of the Parties” (hereinafter referred to as “the DMM”). Since then, negotiations on the DMM have been on-going under the CITES SC and CoP. Ultimately, the DMM (referred to by the Secretariat in recent documents as the “Decision-making mechanism for authorizing ivory trade”¹) would provide rules intended to permit further internationally-sanctioned trade in ivory. The process should originally have been completed at CoP16 in 2013 but was extended to CoP17 in 2016². A DMM Working

* The geographical designations employed in this document do not imply the expression of any opinion whatsoever on the part of the CITES Secretariat (or the United Nations Environment Programme) concerning the legal status of any country, territory, or area, or concerning the delimitation of its frontiers or boundaries. The responsibility for the contents of the document rests exclusively with its author.

¹ SC65 Doc. 42.3, SC66 Doc. 47.4.1 and SC66 Doc. 47.4.2. Available at: <https://cites.org/eng/com/sc/index.php>

² Under Decision 16.55 Parties decided that: “The Standing Committee shall: a) with the assistance of the Secretariat, propose for approval at the latest at the 17th meeting of the Conference of the Parties (CoP17) a decision-making mechanism for a process of

Group was established at the 64th meeting of the Standing Committee (SC64), immediately following CoP16. However, despite almost eight years of discussions, including a study by consultants in 2011-2012 entitled 'Decision-making mechanisms and necessary conditions for a future trade in African elephant ivory', and a background paper prepared by UNEP and the CITES Secretariat for SC66³, no DMM has been agreed, either by the DMM Working Group, the Standing Committee or the Conference of the Parties. The timetable for inter-sessional work agreed by the CoP in 2013 could not be met: as illegal killing of elephants and ivory trafficking escalated it was impossible to reach any consensus amongst Parties.

4. Both reports on the DMM were met with extensive criticism from Parties and Observers⁴; critics of the 2012 Consultants' report included some of the range and consumer States that engaged in the stockpile sales in 1999 and 2008⁵. The Consultants' proposal in 2012 for a "Central Ivory Selling Organisation (CISO)"⁶ was resurrected in the background paper submitted by UNEP and the CITES Secretariat to SC66⁷, despite being rejected when it was first introduced, and once again failed to gain support. The background paper, which was requested from UNEP and the Secretariat at SC65, was delayed by 10 months and criticised extensively by Parties at SC66 in January 2016.⁸ The majority of interventions by Parties and Observers at the Committee's meeting supported a recommendation that discussions on the DMM should be suspended and the mandate ended by the CoP at its 17th meeting⁹. The Standing Committee's conclusions were as follows:

The Standing Committee noted that the Working Group has been unable to conclude its work under Decision 16.55 and agreed to seek advice from the Conference of the Parties at its 17th meeting whether the mandate under Decision 16.55 (and formerly Decision 14.77) should or should not be extended¹⁰.

5. Since the concept was put forward at CoP14 in 2007, the DMM has been highly controversial amongst CITES Parties and Observers, as well as scientists and economists. One of the main problems is reaching a realistic estimate of legitimate, sustainable demand from Asian markets for ivory, and the considerable risk that increasing demand could easily outstrip legally sourced supply. As poaching rates of African elephants increased, this issue of demand estimation came to predominate in both economic and conservation circles. In her letter to the CITES Secretariat in May 2012 commenting on the Consultants' report on the DMM, the Chair of the IUCN African Elephant Specialist Group summed up the dilemma:

trade in ivory under the auspices of the Conference of the Parties; b) at its 64th meeting, establish a working group, composed of the Chair of the Standing Committee, specified key Party stakeholders and the Secretariat, to implement the instruction in paragraph a) of the present Decision. The working group shall work intersessionally and take into consideration relevant documents submitted at previous meetings of the Standing Committee and the findings and comments in document CoP16 Doc. 36 (Rev. 1), and consult additional experts or stakeholders, if considered necessary. The Standing Committee shall consider the findings and recommendations of the working group at its 65th meeting, decide on further actions as required, and agree on a final proposal at its 66th meeting for submission at CoP17; and c) conduct its work on the development of a decision-making mechanism in consultation with all African and Asian elephant range States and, to the extent possible, in both English and French." See: https://cites.org/eng/dec/valid16/16_55.php

³ UNEP Secretariat in Consultation with the CITES Secretariat, SC66 Doc. 47.4.1 Annex, A Decision-Making Mechanism for a Process of Trade in Ivory under the auspices of the Conference of the Parties to CITES: Background Document for the Standing Committee Decision Making Working Group, November 2015

⁴ Comments from Specified Stakeholders on 'Decision-Making Mechanisms and Necessary Conditions for a Future Trade in African Elephant Ivory', CITES Secretariat, March 2013, CoP16 Inf. 5. Available at: <https://cites.org/sites/default/files/common/cop/16/inf/E-CoP16i-05.pdf>; Alejandro Nadal and Francisco Aguayo, Policy Brief: UNEP's background document on the Decision-Making Mechanism, Kenya Elephant Forum, January 2016

⁵ *Ibid.*, Comments from Specified Stakeholders on 'Decision-Making Mechanisms and Necessary Conditions for a Future Trade in African Elephant Ivory'

⁶ R.B. Martin, D.H.M. Cumming, G.C. Craig, D. St.C. Gibson and D.A. Peake, Decision-Making Mechanisms and Necessary Conditions for a Future Trade in African Elephant Ivory, Consultancy for the CITES Secretariat, 24 May 2012, SC62 Doc. 46.4, Annex. Available at: <https://cites.org/sites/default/files/eng/com/sc/62/E62-46-04-A.pdf>

⁷ UNEP Secretariat in Consultation with the CITES Secretariat, SC66 Doc. 47.4.1 Annex, A Decision-Making Mechanism for a Process of Trade in Ivory under the auspices of the Conference of the Parties to CITES: Background Document for the Standing Committee Decision Making Working Group, November 2015

⁸ *Ibid.*

⁹ Proposed by Benin, Burkina Faso, Ethiopia and Kenya in SC66 Doc. 47.4.2

¹⁰ Summary Record of 66th Standing Committee, January 2016. SC66 Sum. 4 (12/01/16)

“Prior to adopting the system described or any modification of the mechanism recommended, it would seem very important that the demand which needs to be fed is estimated in some meaningful way. In China alone, it is possible that if only a nominal fraction of those entering the middle class each year become ivory consumers, the scale of demand would potentially be so large as to outstrip any legally-sourced supply. I raise this because, even with the greatest will in the world, a dramatically increasing demand could rapidly exceed the legal supply and law enforcement efforts on the ground in Africa would very likely be overwhelmed in the face of a challenge of this nature. It could indeed be considered a shortcoming that a document of this magnitude does not really address this possibility. In fact, the assumptions (though perhaps not as clearly articulated as they might have been) of a tightly controlled legal supply and a demand that is comfortably accommodated within those amounts could well be challenged on the basis of current demand, alone.”¹¹

6. Since the DMM process was initiated, elephant losses have accelerated in many sub-Saharan African range States as an apparent consequence of increased demand for ivory from Asian consumer states, which funds global poaching and smuggling networks¹². The CITES programme for Monitoring Illegal Killing of Elephants (MIKE) and the Elephant Trade Information System (ETIS) have reported sustained, high levels of illegal killing of elephants and illegal trade in ivory to the two most recent Standing Committee meetings in July 2014¹³ and January 2016¹⁴. Current elephant poaching levels are higher than the number of elephants born, and African elephant numbers are still in decline.¹⁵ We consider that a vital part of CITES measures to address this crisis effectively should be to send a clear and unambiguous signal that legal trade in ivory through a DMM will no longer be debated. Without such a signal, we believe the risk of extinction of elephant populations in parts of Africa is inevitably increased.

Analysis and Argument

7. The continued existence of a DMM process - however gradual and delayed it may be - provides an incentive for excessive and potentially unlawful consumer demand for ivory from any source. It legitimises an unrealistic and increasingly risky premise: that it is possible for a legal and sustainable global trade in ivory to be established under CITES without also providing cover and encouragement for poaching and illegal trade. As long as there is a market-driven trade system with a demand level that is higher than the intrinsic growth rates of elephant populations, eliminating illegal harvesting to meet this high demand would be difficult, if not impossible.
8. Economic arguments used by some to support legal ivory trade tend to assume markets are stable and price formation dynamics respond to simplistic assumptions. Perhaps the most important of these assumptions is that all market structures are perfectly competitive. Those arguments are also based on partial equilibrium models that ignore all the effects of interdependent markets and where market participants only trade in one commodity. This last assumption runs contrary to all existing evidence about the global ivory market. In fact, the data from ETIS corroborates the fact that market participants are normally criminal syndicates who are involved in several products at the same time and thus act as “multi-product firms”. The assumption that illegal traders are single product firms seriously underestimates their capacity to withstand a price war.
9. Other economists have challenged these assumptions on four levels. First, perfect competition assumes prices will drop once a legal supply is allowed. However, even in partial equilibrium models and with perfect competition the adjustment process will not necessarily move in the desired direction unless the elasticity of supply is smaller than the elasticity of demand.¹⁶ Since numerous studies affirm that demand

¹¹ Extract from letter of Dr Holly Dublin to Tom de Meulenaer, 11 May 2012. Available at: https://cmsdata.iucn.org/downloads/afesg_comments_draftreport_11may2012.pdf

¹² E.g., George Wittemyer, Joseph Northrup, Julian Blanc, Iain Douglas-Hamilton, Patrick Omondi and Kenneth Burnham (2014), *Illegal killing for ivory drives global decline in African elephants*, PNAS, vol. 111 no. 36. Available at: <http://www.pnas.org/content/111/36/13117.abstract>.

¹³ SC65 Doc. 42.1 Annex 1, *Elephant Conservation, Illegal Killing and Ivory Trade*. Available at: https://www.cites.org/sites/default/files/eng/com/sc/65/E-SC65-42-01_2.pdf

¹⁴ SC66 Doc. 47.1 Annex 1, *Elephant Conservation, Illegal Killing and Ivory Trade*. Available at: <https://cites.org/sites/default/files/eng/com/sc/66/E-SC66-47-01.pdf>

¹⁵ CITES Press Release Geneva/Kasane, 23 March 2015: *Elephant poaching rates virtually unchanged in 2014 - CITES MIKE programme says that elephant populations continue to decline owing to steady poaching trends*; CITES Press Release Geneva/New York/Nairobi, 3 March, 2016: *African elephants still in decline due to high levels of poaching*

¹⁶ Elasticity is the measurement of how responsive an economic variable is to a change in another, e.g. the responsiveness of supply and demand in relation to changes in price.

for ivory is highly inelastic, the likelihood that the elasticity of supply is greater needs to be seriously considered. In that case, the legal trade in ivory would bring about a runaway process of trade expansion, leading to extremely negative results. Furthermore, different market structures will yield different results in terms of price dynamics, and in some plausible cases ivory prices do not need to drop even with a legal supply. Second, the paucity of information at the firm and market levels on cost structures and profitability can lead to seriously underestimating the capacity of illegal traders to wage a protracted price war. Third, the near-impossibility of controlling supply on a global level makes it very difficult to ensure that the behaviour of prices and profitability will correspond to the dynamics of the simplistic pro-trade models. Finally, there is a serious gap in information concerning how demand will effectively respond to price reductions (if they indeed take place). To summarize, a crucial flaw at the heart of a DMM-based system for legal ivory trade is that if indeed it did reduce ivory prices, consumer demand for elephant ivory could expand to even more unsustainable levels than at present; yet if prices do not drop, the incentive to poach elephants for their ivory will remain high¹⁷.

10. For many elephant range States under unprecedented pressure from globally organised poaching for ivory, which is being used to fund armed conflict and insurgency as well as feed unsustainable demand from consumers, the very concept of a DMM now seems anachronistic, irrelevant and dangerous.
11. Continuing to utilise scarce CITES resources to devise an ivory trading mechanism would send an unacceptable signal to the world. Such a step would ignore widening opposition to all trade in ivory at national, regional and international levels, including by governments as well as civil society. Several high-level initiatives (including by countries formerly supporting and benefiting from ivory sales) have acknowledged the need for at least a moratorium on ivory trade and to reduce demand for ivory. Sixteen countries have publicly destroyed ivory stockpiles since 2011, and several others have announced they will do so. In many States, including China, the US, several countries in the EU and in Africa¹⁸, ivory disposals have been accompanied by political commitments at highest levels to end the ivory trade altogether. These include the Presidential agreement between China and the US¹⁹; the Cotonou Declaration by representatives from 25 African countries calling for a strict ban on international and domestic ivory trade²⁰; the announcement by Hong Kong that it will close its domestic market²¹; and the EU Action Plan, against Wildlife Trafficking which aims, *inter alia*, to largely close the EU domestic market (except for antiques) and prohibit export of raw pre-convention ivory²². CITES needs to respond to this commitment in a timely and sensitive way.
12. CITES has reached the end of a long and winding road in its efforts to establish a regulated ivory trade - arguably this has always been an impossible mission. Prior to the DMM negotiations there was a clear sequence of unsuccessful experiments under CITES to establish a regulated ivory trade, including the voluntary quota and ivory marking schemes of the 1980s and the closed one-off sales to Asian countries in 1999 and 2008. After more than 30 years of experiments in controlled trade, elephant populations are at record low levels, and are declining on average by 2-3% annually²³. There has also been a high human

¹⁷ Alejandro Nadal and Francisco Aguayo in *Leonardo's Sailors - A Review of the Economic Analysis of Wildlife Trade* (Leverhulme Centre for the Study of Value, The University of Manchester, 2014) provide the most authoritative, recent exposition of arguments on the deficiencies of economic models advocating the legalisation of trade in (eg) elephant ivory. <http://thestudyofvalue.org/wp-content/uploads/2014/06/WP5-Nadal-and-Aguayo-Leonardos-Sailors-2014.pdf>. A specific critique of the DMM by Nadal is available at <http://annamiticus.com/2014/07/07/roaming-minefield-cites-decision-making-mechanism-trade-ivory/>

¹⁸ including Chad, Ethiopia, Gabon, Kenya and the Republic of Congo

¹⁹ President Obama and President Xi agreed: 'The United States and China commit to enact nearly complete bans on ivory import and export, including significant and timely restrictions on the import of ivory as hunting trophies, and to take significant and timely steps to halt the domestic commercial trade of ivory', Fact Sheet: President Xi Jinping's State Visit to the United States, 24-25 September 2015 available at <https://www.whitehouse.gov/the-press-office/2015/09/25/fact-sheet-president-xi-jinpings-state-visit-united-states>

²⁰ Agreed on 4 November 2015 and available at http://www.ffw.ch/en/actualidad_detalle/05112015-ae-great-news-from-africa/1/66; see also: <http://www.independent.co.uk/voices/campaigns/GiantsClub/african-countries-demand-total-ban-on-international-ivory-trade-a6729326.html>

²¹ Reported on 13 January 2016. See: <http://www.wptz.com/national/hong-kong-to-phase-out-ivory-sales/37408090> and: <http://news.nationalgeographic.com/2016/01/160113-Hong-Kong-ivory-trade-poaching-elephants/>

²² See Communication on the EU Action Plan against Wildlife Trafficking, adopted on 26 February 2016 and available at: http://ec.europa.eu/environment/cites/trafficking_en.htm

²³ See Wittmeyer et al. (op. cit.) which showed in 2014 that CITES MIKE data was likely to underestimate poaching levels. Published estimates for the total population of African elephants are increasingly based on out-dated data. A series of recent studies by African and international scientists show major and in some cases catastrophic further declines in local elephant populations in both Central and Eastern Africa. Whilst the African Elephant Specialist Group (AfESG) and IUCN cite a figure of around 500,000 African elephants left in the wild, some experts believe the true figure may be closer to 250,000 - see Jones, T., and K. Nowak, *Elephant Declines Vastly Underestimated*, National Geographic, December 2013. Available at: <http://newswatch.nationalgeographic.com/2013/12/16/elephant-declines-a-view-from-the-field/>. A more accurate estimate of current population levels is expected from the Great Elephant Census

cost from deaths and injuries to wildlife rangers and rural societies inflicted by poachers. The only recent period of significant stabilisation and recovery in elephant populations took place as a consequence of the full CITES listing of elephants on Appendix I, banning all commercial ivory trade, which was in force during the period 1990-1997.

Budgetary Implications for CITES

13. In accordance with Resolution Conf. 4.6 (Rev. CoP16), consideration has been given to the budgetary and workload implications of this proposal for the CITES Secretariat. The authors of this document do not consider the proposal has substantial funding requirements. In fact, ending the DMM mandate will save considerable resources for the Secretariat and Parties.

Conclusion and Recommendation

14. There is no credible case for extending the mandate of the process for establishing a Decision-Making Mechanism for a process of trade in ivory. Indeed, to do so would send a counter-productive signal to wildlife criminals, smugglers and traffickers that ivory could continue to be poached and hoarded as investment or for introduction into legal supplies at a future date. In contrast, ending the mandate would send a clear international message that Governments are united in their efforts to protect elephants and end the scourge of ivory poaching. Incentives to obtain poached ivory for future profit through laundering would be significantly reduced. CITES Parties and enforcement authorities would then be able to focus on measures to conserve elephants in the wild.
15. It is therefore recommended, in the light of the crisis facing elephant populations in the majority of range States, that the Conference of Parties DECIDES:
 - (i) not to extend the mandate under Decision 16.55 (and formerly Decision 14.77) for a decision-making mechanism for a process of trade in ivory under the auspices of the Conference of the Parties (DMM); and
 - (ii) to recommend that Parties with the support of the Secretariat, should focus on legislative, enforcement, educational and fund-raising measures to significantly reduce poaching rates, demand for ivory and illegal commerce, particularly through implementation of the African Elephant Action Plan and support for the African Elephant Fund, in order to achieve long-term security of elephant populations.

COMMENTS FROM THE SECRETARIAT

- A. As indicated in its comments on document CoP17 Doc. 84.1, the Secretariat supports the view of the Standing Committee that the matter of the deletion, suspension or renewal of instructions concerning the development of a decision-making mechanism for trade in ivory be decided by the Conference of the Parties at its present meeting.
- B. The Secretariat suggests that documents CoP17 Doc. 84.1, 84.2 and 84.3 be discussed together.

(GEC), which is due to be made available before CoP17. GEC data should also inform an up-dated status report being prepared by the AfESG for publication before CoP 17.